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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,780	08/02/2005	Titus Selzer	12684.12USWO	6958

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EXAMINER	
DOUGLAS, STEVEN O	
ART UNIT	PAPER NUMBER
3771	
MAIL DATE	DELIVERY MODE
02/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/519,780	SELZER ET AL.	
	Examiner	Art Unit	
	/Steven O. Douglas/	3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 August 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7,9 and 11-15* is/are rejected.

7)☒ Claim(s) *8 and 10* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *03212005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Specification

The Specification is informal in layout. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a ***section heading****. If no text follows the* ***section heading****, the phrase "Not Applicable" should follow* ***the section heading****:*

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
(f) BACKGROUND OF THE INVENTION.
    (1) Field of the Invention.
    (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.
(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(i) DETAILED DESCRIPTION OF THE INVENTION.
(j) CLAIM OR CLAIMS (commencing on a separate sheet).
(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Drawings

The drawings are objected to because Figure 1 contains descriptions in German.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office

action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 2-7,11,14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 2, the phrase "in particular allows or interrupts" (line 4) renders the claim indefinite since the metes and bounds of the claim cannot be readily ascertained; language such as "in particular" and alternate language (i.e. "or") should be avoided.

In regard to claim 3, the phrase "in particular activates and deactivates" (line 6) renders the claim indefinite since the metes and bounds of the claim cannot be readily ascertained; language such as "in particular" should be avoided.

In regard to claim 4, the phrase "in particular as regards the duration and/or frequency of nebulisation" (line 4 and 5) renders the claim indefinite since the metes and bounds of the claim cannot be readily ascertained; language such as "in particular" and alternate language (i.e. "and/or") should be avoided. Also in regard to claim 4, "(nebulisation schema)" (line 4) appearing in brackets should be incorporated in the claim without brackets if such limitation is to be considered as being positively recited.

In regard to claim 7, clear and proper antecedent basis for the "nebulisation schemata" (line 3) should be defined.

In regard to claim 11, "(nebulisation schema)" (line 4) appearing in brackets should be incorporated in the claim without brackets if such limitation is to be considered as being positively recited.

In regard to claim 14, Applicant's use of alternate language (i.e. and/or) renders the claim indefinite and should be avoided.

In regard to claim 15, claim 15 is written as a dependent claim. However, the claim omits the claim in which it depends from. Also in regard to claim 15, clear and proper antecedent basis for the "duration/frequency of the nebulisation intervals" (line 3) and the "stored liquid" (line 4) should be defined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 199 34 582 (DE'582).

The DE'582 reference discloses an inhalation therapy device 1 comprising an oscillation generating device (5,6), a storage portion or reservoir containing a liquid medicament 4 to be nebulized into droplets 8 and sensor arrangement (proximate reference numeral 15) that in temperature based.

Claims 1,3 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by FR 1 429 460 (FR'460).

The FR'460 reference discloses an inhalation therapy device (see Fig. 1) comprising an oscillation generating device 21, a storage portion or reservoir containing a liquid medicament 15 to be nebulized into droplets (see Fig. 2) and sensor arrangement (T) that in temperature based.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE'582 in view of Riggs et al. (US Pat. 5,355,872).

The DE'582 reference discloses a nebulizing device (supra), but fails to disclose the nebulising device as including a nozzle, compressed gas and valve control device. The Riggs et al. reference discloses another nebulization system that utilizes a nebulizer arrangement including a nozzle (66,68), compressed gas 44 and valve control device/valve 40. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a nebulizer arrangement as, for example, shown by Riggs et al for the oscillation-type nebulizer arrangement of DE'582, wherein so doing would amount to the mere substitution of one type of nebulizer arrangement for another that would work equally as well. Furthermore, such substitution would have a reasonable amount of predicted success to one of ordinary skill in the nebulizer arts.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over FR'460 in view of Riggs et al. (US Pat. 5,355,872).

The FR'460 reference discloses a nebulizing device (supra), but fails to disclose the nebulising device as including a nozzle, compressed gas and valve control device. The Riggs et al. reference discloses another nebulization system that utilizes a nebulizer arrangement including a nozzle (66,68), compressed gas 44 and valve control device/valve 40. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a

nebulizer arrangement as, for example, shown by Riggs et al for the oscillation-type nebulizer arrangement of FR'460, wherein so doing would amount to the mere substitution of one type of nebulizer arrangement for another that would work equally as well. Furthermore, such substitution would have a reasonable amount of predicted success to one of ordinary skill in the nebulizer arts.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Rowland, Schuster et al., Higson et al., Sun et al., Chen and Cewers references pertain to other nebulizing systems with associated controls and droplet generators.

Claims 8 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 4-7 and 11-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Steven O. Douglas/ whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/
Primary Examiner
Art Unit 3771

SD
2/13/08